IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 1373 OF 1998
In
SPECIAL CIVIL APPLICATION NO. 8356 OF 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL TRANSPORT SERVICE - Appellant(s)

Versus

SIRAJUDDIN MUNIRUDDIN SHAIKH - Respondent(s)

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Appearance :
MR. H.S. MUNSHAW for Appellant
MR. MUKESH H. RATHOD for Respondent
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CORAM :HONOURABLE MR.JUSTICE R.S.GARG &
HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 29/06/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Present is an appeal under Clause-15 of the Letters Patent by Ahmedabad Municipal Transport Service being aggrieved by Order dated 9th November, 1998 passed in Special Civil Application No.8356 of 1997.

2. It appears that an accident under the hands of the present respondent-driver led to a departmental inquiry, which culminated into termination of the present respondent and further leading to a reference before the Labour Court. The Labour Court did observe that the respondent was changing his stand from time to time and in fact, was negligent in driving the bus. The Labour Court, however, observed that present was not a case where the order of termination was called for. The Labour Court, accordingly, directed reinstatement of the respondent-workman with 50% back-wages. The order, not being palatable to the appellant, was challenged in the Special Civil Application and after dismissal of the same, they are before the Division Bench.

3. Mr.H.S.Munshaw, learned Counsel for the appellant, submits that in view of the findings recorded by the Labour Court and approved by the learned single Judge, there was no scope for directing the reinstatement or award of 50% back-wages. His submission further is that certain claims have been filed under the provisions of the Motor Vehicles Act, which will have to be made by the appellant-Corporation and the Corporation has to suffer losses in the form of loss to the bus. His submission is that present is a fit case for directing termination of the present respondent. In the alternative, it was argued that if present is found to be a fit case for reinstatement, then, no back-wages should have been awarded or in any case, a direction ought to have been issued in favour of the appellant and against the respondent that in the event of liability to pay the compensation stares in the face of the appellant, then, the respondent would be asked to make the payment of the compensation amount along with interest.

4. Mr.Songara, learned Counsel for the respondent-workman, submitted that from the findings recorded by the Labour Court, it would clearly appear that because of an

oncoming truck with full headlights, the respondent was left with no choice but to turn the vehicle and under the circumstances, the accident became inevitable. His submission is that the Labour Court, so also the learned single Judge, were justified in directing the reinstatement with 50% back-wages.

5. From the records, which are available with us, it is clear that the Labour Court's observations are that the respondent-workman had been changing his stand time and again and to suit his case and cause. The Labour Court has also observed that from the evidence, it is clearly proved that the respondent was negligent in discharge of his duties while driving the vehicle. Ordinarily, with these findings, the Court, if wanted to interfere on the question of punishment, then, at least it should have seen that the punishment is commensurate with the wrong committed by the particular person. The award of withholding of one year's increment with cumulative effect would not give any solace to the appellant, especially, when they are required to pay 50% of back-wages from the date of termination till the date of the award.

6. Taking into consideration the totality of the circumstances, we hereby direct that the award of reinstatement shall stand unmodified, but, however, the appellant shall pay 25% back-wages without any interest to the respondent within six months from today, if not already paid. The award is modified to the above extent. The appeal is accordingly disposed of.

[***R.S.Garg, J.***]

[***Ravi R.Tripathi, J.***]

*kamlesh**